SATVINDER SINGH JAI SINGH

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[CRIMINAL APPLICATION NO. 2 OF 1986]
29 MAY 1986

CRIMINAL LAW AND PROCEDURE: *Jurisdiction - Powers of Registrar of Sessions Court and of 1st Class Magistrate - Width and co-extensiveness of powers - Appellate jurisdiction of 1st Class Magistrate over 2nd Class Magistrate - Courts of Judicature Act 1964 - Subordinate Courts Act 1948 - Whether null and void; s. 117 of the Criminal Procedure Code - Detention.*

On 23 April 1986 the applicant was taken before the Registrar of the Sessions Court by an Anti Corruption Agency officer. The Registrar then made an order for the applicant to give a statement at the Anti Corruption Agency office after which the applicant was released. At 12 noon on the same day, the applicant was brought before a Magistrate in Seremban by the same Anti Corruption Agency officer who then made an application for the applicant to be detained for a week under s. 117 of the Criminal Procedure Code ("the Code"). The Magistrate ordered the detention of the applicant for four days. Counsel for the applicant then filed an urgent application to set aside the order made by the Magistrate and to reinstate the order made by the Registrar. At the hearing of the urgent application, the hearing was adjourned to 28 April 1986 (at the request of the Deputy Public Prosecutor). The appellant was released on bail of RM1,000. The issue here was whether the order of the Registrar or that of the Magistrate should stand.

Held:

[1] Although the powers of the Registrar (a 2nd Class Magistrate) are not as wide as that of a 1st Class Magistrate, the former's powers are co-extensive with that of the 1st Class Magistrate. As far as the issue of orders under s. 117 of the Code is concerned, the powers of the 1st and 2nd Class Magistrates are the same.

[2] Since both the powers of both classes of Magistrates are co-extensive, the order of the Magistrate in effect quashed the earlier order of the Registrar. Neither the Courts of Judicature Act 1964 nor the Subordinate Courts Act 1948 contain any provision as to the appellate jurisdiction of the 1st Class Magistrate over a 2nd Class Magistrate. Consequently, the purported exercise of the appellate powers by the 1st Class Magistrate in this case was null and void.

[Order of the Magistrate set aside and order of the Registrar reinstated.]

Legislation referred to:
Criminal Procedure Code s. 117

For the applicant - Christopher Fernando; M/s. Gunaretnam & Co.
For the public prosecutor - Zaki bin Md. Yasin; DPP

[**Editor's Note:** An appeal has been lodged against the above decision *vide* Criminal Application No. 24/1986]

JUDGMENT

Mustapha Hussain J:

On the 23 April 1986, the applicant was taken before the Registrar of Sessions Court, Seremban at about 10.00 a.m. by an Anti Corruption Agency officer who applied for a detention order against the applicant under s. 117 of the Criminal Procedure Code.

At the hearing of the application, the applicant was represented by his Counsel. After submissions that the applicant will be available at any time and be willing to give an undertaking not to interfere with witnesses, the ACA officer agreed that the applicant could go to the ACA office to give a statement and be released. The Registrar then made an order for the applicant to go the ACA office to give a statement and be released thereafter.

Then, about 12.00 noon the same day i.e. 23 April 1986, the applicant was brought before a Magistrate in Seremban, by the same ACA officer who made an application for an order of one week's detention under s. 117 of the CPC. The learned Magistrate made an order of four day's detention of the applicant. The applicant then telephoned his Counsel who on the same afternoon filed an urgent application before this Court seeking an order to set aside the order of detention made by the learned Magistrate and to reinstate the order given by the learned Registrar of the Sessions Court in the first instance.

At the hearing of this urgent application that same afternoon on 23 April 1986, the learned Deputy Public Prosecutor sought an adjournment of the hearing in order to enable him to file an affidavit in reply. The Court adjourned the hearing to 28 April 1986 and ordered the applicant to be released on bail in the sum of RM1,000 in one surety pending the hearing of the application.

The Registrar of a Sessions Court is gazetted as a 2nd Class Magistrate. His powers though not as wide as that of a 1st Class Magistrate, are co-extensive with that of that 1st Class Magistrate. The powers and jurisdiction of a 2nd Class Magistrate for imposing fines and imprisonment are lower than that of a 1st Class Magistrate. But as far as the issue of orders for detention under s. 117 of the CPC is concerned, the powers of the 1st and 2nd Class Magistrates are the same.

In the instant case, though the learned Registrar did not issue an order of detention when the applicant was first produced before him as sought by the ACA officer, he did indeed make an order directing the applicant to go to the ACA office to give a statement and he be released thereafter.

The order of the learned Magistrate whereby he ordered the detention of the applicant for four days, was also an order. Since the powers of the learned Registrar and the learned Magistrate are co-extensive, the order of the learned Magistrate (the second order) in effect quashed the earlier order (first order) of the learned Registrar. Nowhere in the Courts of Judicature Act, 1964 or the Subordinate Courts Act, 1948, does it spell out the appellate jurisdiction of the 1st Class Magistrate over the 2nd Class Magistrate. As such the purported exercise of the appellate powers by the 1st Class Magistrate in this case was null and void. Accordingly, I set aside the said order of the learned Magistrate, leaving the order (first order) of the learned Registrar to stand.

Also found at [1986] 2 CLJ 45